

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42

**PUBLIC KNOWLEDGE AND BENTON FOUNDATION REPLY COMMENTS IN
SUPPORT OF REQUEST FOR RECONSIDERATION CONCERNING LIFELINE
BROADBAND PROVIDERS**

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March 23, 2017

I. Introduction

Public Knowledge and Benton Foundation¹ submit these reply comments in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice² seeking comment on a request for reconsideration³ concerning the Wireline Competition Bureau's ("WCB") Order on Reconsideration ("*LBP Revocation Order*") revoking the Lifeline Broadband Provider ("LBP") designations of nine service providers ("Service Providers").⁴ After an initial round of comments, the record shows no evidence of, and minimal support for the WCB's undocumented assertions that waste, fraud, and abuse would result from designating the Service Providers as LBPs. Further, withholding Lifeline provider designations would delay implementation of the Commission's *Lifeline Modernization Order*⁵ and undermine efforts to close the digital divide. Lastly, it is clear that the Commission has the legal authority to designate

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These reply comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

² See *Wireline Competition Bureau Seeks Comment on Request for Reconsideration Concerning Lifeline Broadband Providers*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 17-213 (rel. March 2, 2017).

³ See Letter from Jessica J. Gonzalez, Free Press, 18MillionRising.org, AFL-CIO, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice – AAJC, Center for Media Justice, Center for Rural Strategies, Color of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, Fight for the Future, FOOTPRINTS INC., Generation Justice, Global Action Project, human-I-T, Inclusive Technologies, Monterey County Office of Education, NAACP, National Consumer Law Center, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, New America's Open Technology Institute, Open MIC, Partners Bridging the Digital Divide, Public Knowledge, SPNN, The Benton Foundation, The Greenlining Institute, United Church of Christ, OC Inc., and WinstonNet, Inc., LLP, to Chairman Pai, Commissioner Clyburn, and Commissioner O'Rielly, FCC, WC Docket No. 11-42 (filed Feb. 23, 2017).

⁴ See *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (rel. Feb. 3, 2017) ("*LBP Revocation Order*").

⁵ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006, ¶ 126 (2016) ("*Lifeline Modernization Order*").

providers as eligible to offer Lifeline-supported service. Therefore, the WCB should reconsider the decision reached in its *LBP Revocation Order* and reinstate the LBP designations of Spot On Networks LLC, Boomerang Wireless LLC, KonaTel Inc., STS Media, Inc., Applied Research Designs, Inc., Kajeet Inc., Liberty Cablevision of Puerto Rico, LLC, Northland Cable Television, Inc., and Wabash Independent Networks.

II. The Record Does Not Support The WCB's Conclusion That Granting The LBP Designations Will Not Compromise The Integrity Of The Program.

The *LBP Revocation Order* relies on claims of waste, fraud, and abuse to revoke the Service Providers' LBP designations. However, the WCB provides no evidence that revoking LBP designations would eliminate waste, fraud, and abuse but instead appears to rely on anecdotal and unsubstantiated information that Chairman Pai claims to have gathered from USAC. Indeed, commenters agree that the Commission has taken significant steps to protect the integrity of the Lifeline and curb potential fraud with the program's recent move to offer broadband services.

A. The WCB Provides No Evidence Revoking Lifeline Provider Designations Would Eliminate Waste, Fraud, and Abuse.

The *LBP Revocation Order* justifies its decision to revoke the LBP status of the Service Providers on the grounds it may be necessary "to prevent further waste, fraud, and abuse in the Lifeline program,"⁶ but fails to provide any evidence of these claims. Indeed, commenters note that the WCB simply rehashes broad concerns of the LBP modernization process that were already addressed in the notice and comment period leading up to the adoption of the *Lifeline Modernization Order*.⁷

⁶ See *LBP Revocation Order*, ¶¶ 7-8.

⁷ See Comments of Voices For Internet Freedom Members, WC Docket Nos. 09-197, 11-42, at 5 (Mar. 16, 2017) ("Voice For Internet Freedom Members Comments").

The *LBP Revocation Order* asserts, without evidence, that the Universal Service Administrative Company (“USAC”) has indicated at least 16 major Lifeline resellers have engaged in fraud to claim reimbursement for duplicate and ineligible consumers. To support its reasoning, the WCB cites Chairman Pai’s testimony from July 2016 before the House Committee on Energy and Commerce (“Committee”).⁸ However, the claims in Chairman Pai’s testimony are unsupported by any evidence – both in his testimony to the Committee, or in any follow-up in the more than eight months since his appearance before the Committee. Thus, the WCB’s leading rationale for revoking the Service Providers’ LBP designations is based almost entirely on undocumented claims by Chairman Pai that someone at USAC alerted him to ongoing Lifeline fraud. Providers participating in the Lifeline program, ratepayers that contribute to Lifeline, and low-income families that rely on Lifeline deserve more than the WCB merely echoing undocumented accusations.

Further, even if it were true that wireless resellers have engaged in a high number of “Independent Economic Household” (“IEH”) overrides of duplicate subscriber determinations, this behavior is not necessarily an indication of waste, fraud, and abuse in the Lifeline program. USAC developed the IEH worksheet to allow carriers to enroll subscribers who live in independent economic households, even if that particular household has the same address as another Lifeline subscriber.⁹ Overrides are necessary for eligible Lifeline subscribers who live in

⁸ *LBP Revocation Order*, ¶ 7 n.17 (citing Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4-5 (July 12, 2016)). Chairman Pai’s July 12, 2016 testimony does not include any citation or evidence that would allow for verification or investigation of his claim that USAC has expressed concern that 16 major Lifeline resellers have used tactics similar to Total Call Mobile.

⁹ See Universal Service Administrative Company, Eligibility Requirements, *available at* <http://www.lifelinesupport.org/ls/eligibility/eligibility-requirements.aspx> (USAC states the IEH

homeless shelters, veteran homes, and other types of multi-dwelling units.¹⁰ Further, the record demonstrates USAC has implemented a number of reforms to curb potential fraud with overrides of duplicate subscriptions.¹¹ Therefore, mere conjecture that a high number of overrides took place is not evidence of waste, fraud, and abuse and should not be the basis for the WCB's revocation of LBP designations.

B. Commenters Agree The Commission Has Already Taken Steps To Eliminate Waste, Fraud, and Abuse in the Lifeline Program.

The record demonstrates that the Commission has repeatedly acted in recent years to eliminate waste, fraud and abuse in the Lifeline program, including the establishment of the National Lifeline Accountability Database.¹² The record strongly supports that these improvements have helped protect the program's integrity. Several commenters point out the creation of the National Lifeline Eligibility Verifier ("National Verifier")¹³ as a significant improvement that would foreclose the main source of fraud in the program.¹⁴ Once the National

worksheet must be completed any time more than one person at the same address receives a discount on telephone service, or when a new applicant applies for service at an address where there is already a subscriber.).

¹⁰ See Comments of LocalTel Communications, WC Docket Nos. 09-197, 11-42, at 6 (Mar. 16, 2017) ("LocalTel Communications Comments").

¹¹ See Comments of the Greenlining Institute on the Request for Reconsideration Concerning Lifeline Broadband Providers WC Docket Nos. 09-197, 11-42, at 5 (Mar. 16, 2017) (citing to U.S. House, Committee on Energy and Commerce, *The Lifeline Program: Examining Recent Allegations of Waste, Fraud, and Abuse* (July 2016), [https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20\(7.12.2016\).pdf](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20(7.12.2016).pdf)) ("Greenlining Institute Comments").

¹² See Greenlining Institute Comments at 5.

¹³ See *Lifeline Modernization Order*, 31 FCC Rcd at 4006, ¶ 126 (2016).

¹⁴ See Voice For Internet Freedom Members Comments at 6; Greenlining Institute Comments at 5; Comments of the Consortium for School Networking, State Educational technology Directors Association, Alliance for Excellent Education, and Common Sense Kids Action, WC Docket Nos. 09-197, 11-42, at 4 (Mar. 15, 2017) ("Consortium for School Networking et al Comments").

Verifier is fully implemented, Lifeline providers will no longer determine subscriber eligibility, which would eliminate the type of fraud cited in the *LBP Revocation Order*.¹⁵

III. Withholding Lifeline Provider Designations Would Delay The Commission's Lifeline Modernization Order And Undermine Efforts To Close The Digital Divide.

The Lifeline Provider Designation Process the WCB applied in designating the Service Providers as LBPs is an important first step in implementing the *Lifeline Modernization Order* and ultimately closing the digital divide. The record indicates that revoking the LBP designation process has jeopardized thousands of subscribers from accessing broadband, and eligible LBPs are ready, willing, and able to provide these services. Without the LBP designation process, the *Lifeline Modernization Order* cannot be fully implemented, leaving low-income consumers on the wrong side of the digital divide with fewer choices for affordable, Lifeline-supported broadband service.

A. The Lifeline Provider Designation Process Is An Important Step In Implementing The *Lifeline Modernization Order*.

The Lifeline Provider Designation Process the WCB applied in its December 2016 and January 2017 Orders (“*LBP Designation Orders*”) designating the Service Providers as LBPs is an important first step in implementing the *Lifeline Modernization Order*. In its *LBP Designation Orders*, the WCB designated the Service Providers as LBPs, explaining that the Service Providers are not the subject of any pending enforcement proceeding, investigation, or regulatory action, and their history of compliance with applicable laws and regulations makes it likely the Service Providers will bolster the integrity of the Lifeline program.¹⁶ Just weeks later, the

¹⁵ See *LBP Revocation Order*, ¶ 7; see also Greenlining Institute Comments at 5; Voice For Internet Freedom Members Comments at 6.

¹⁶ See *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket Nos. 09-197, 11-42, Order, 31 FCC Rcd 12736, 12742-43 ¶¶ 21, 23 (2016); *Telecommunications*

WCB's *LBP Revocation Order* rescinded the LBP designations and indicated the WCB is prepared to refrain from granting any LBP designations until any possibility for waste, fraud, and abuse has been eradicated from the program.¹⁷ However, the record illustrates why revoking the LBP designations is problematic for implementing the *Lifeline Modernization Order*, and ultimately, at odds with the Chairman's stated goal of closing the digital divide. For example, Greenlining Institute states that if the Commission revokes the LBP designation for Service Providers, it punishes the first movers and "signals that the streamlining process is effectively dead until the Commission considers new measures to curb waste, fraud, and abuse."¹⁸ Voice for Internet Freedom further explains how revoking the LBP designation process has jeopardized service to thousands of low-income subscribers.¹⁹

The record also shows that eligible LBPs are ready, willing, and able to provide Lifeline services.²⁰ Two facilities-based providers, LocalTel Communications and Northland Cable Television, explain how their business models and low-income subscriber bases ideally situate them to receive LBP designation; however, the *LBP Revocation Order* leaves them without clear guidance on how the WCB will review LBP designation petitions moving forward.²¹ Similarly, FreedomPop views the "streamlined LBP designation process as a valuable opportunity to make

Carriers Eligible for Universal Service Support et al., WC Docket Nos. 09-197, 11-42, Order, 32 FCC Rcd 784, 792 ¶¶ 23, 25 (2017).

¹⁷ See Public Knowledge and Benton Foundation Comments at 6.

¹⁸ See Greenlining Institute Comments at 3.

¹⁹ See Voice For Internet Freedom Comments at 3-5.

²⁰ See LocalTel Communications at 2-3; see also Comments of Northland Cable Television, Inc., WC Docket Nos. 09-197, 11-42, at 2-3 (Mar. 16, 2016) ("Northland Cable Television Comments"); Comments of Q Link Wireless LLC, WC Docket Nos. 09-197, 11-42, at 1-2 (Mar. 16, 2017) ("Q Link Wireless Comments"); Comments of STS Media, Inc. D/B/A FreedomPop, WC Docket Nos. 09-197, 11-42, at 2 (Mar. 16, 2017) ("FreedomPop Comments").

²¹ See LocalTel Communications at 2-3; Northland Cable Television Comments at 2-3.

its services available to Lifeline-eligible consumers.”²² These comments indicate that the WCB’s actions risk chilling further provider participation in Lifeline.²³ Without the LBP designation process, eligible providers are unable to provide Lifeline services and Lifeline subscribers have fewer, and potentially less competitive and innovative choices for service providers.

B. Implementing the *Lifeline Modernization Order* Is Critical To Closing The Digital Divide.

Chairman Pai has said closing the digital divide is his top priority.²⁴ The Commission adopted the *Lifeline Modernization Order* to meet the needs of low-income consumers that could not afford broadband services – to help close the affordability gap that keeps so many Americans unconnected to 21st Century communications services.²⁵ The record demonstrates why this program is an important tool for closing the digital divide.²⁶ Voices For Internet Freedom Members explain how increasing the affordability of pre-paid broadband services would substantially impact adoption in low-income communities of color.²⁷ Greenlining Institute highlights how some of the eligible LBPs would be providing services directly to these communities.²⁸ Therefore, Lifeline is incredibly important for low-income consumers and

²² FreedomPop Comments at 3.

²³ See Public Knowledge and Benton Foundation Comments at 9.

²⁴ Letter from Chairman Ajit Pai to Senator Tammy Baldwin (February 21, 2017), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0303/DOC-343756A3.pdf; Remarks of Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2017) at 2, https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

²⁵ See *Lifeline Modernization Order*, 31 FCC Rcd 3963 ¶¶ 2-3.

²⁶ See, e.g., Voice For Internet Freedom Members Comments at 7-9; Greenlining Institute Comments at 6-8; Consortium for School Networking et al Comments at 2-4.

²⁷ See Voices For Internet Freedom Members Comments at 8.

²⁸ See Greenlining Institute Comments at 6-7.

minority communities, given that affordability remains the primary barrier to broadband adoption, and studies indicate the above-referenced groups adopt broadband at lower rates.²⁹

The *Lifeline Modernization Order* is also important for low-income students who face a homework gap. Teachers in high-poverty schools are more likely than teachers in more affluent schools (56 percent to 21 percent, respectively) to cite students' lack of resources and access to digital technologies as a challenge in their classrooms.³⁰ Without access to broadband, students are limited in their ability complete assignments and fully benefit from digital learning opportunities.³¹ If the *Lifeline Modernization Order* is not fully implemented, the homework gap will only grow as district technology leaders "expect to see their district's instructional materials to be at least 50% digital within the next 3 years."³² Overall, the record demonstrates how critical the *Lifeline Modernization Order* is to Chairman Pai's stated goal of closing the digital divide.

IV. The Commission Has Legal Authority To Designate Providers As Eligible To Offer Lifeline Service.

In its comments, the National Association of Regulatory Utility Commissioners ("NARUC") argues that section 214(e) of the Communications Act does not allow the FCC to preempt the states' role in designating Eligible Telecommunications Carriers ("ETCs") to participate in Lifeline.³³ Specifically, NARUC argues the FCC cannot preempt the states'

²⁹ See *Lifeline Modernization Order*, 31 FCC Rcd 3963, 3968, ¶¶ 2, 19; see also Public Knowledge and Benton Foundation Comments at 9; Greenlining Institute Comments at 6; S. Derek Turner, Free Press, Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption, at 27 (Dec. 2016), https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf.

³⁰ Linda Darling-Hammond et al., Stanford Center For Opportunity Policy In Education, Using Technology To Support At-Risk Students' Learning, at 2-3, Fig. 2 (2014).

³¹ See Consortium for School Networking et al Comments at 2.

³² *Id.* at 3.

³³ See Comments of the National Association of Regulatory Utility Commissioners, WC Docket Nos. 09-197, 11-42, at 3 (Mar. 16, 2017) ("NARUC Comments").

authority because Congress explicitly required Lifeline providers to be ETCs.³⁴ However, the Commission correctly relied on section 214(e)(6) to permit carriers to obtain ETC designations specific to Lifeline.³⁵ The Commission based its analysis on the grounds that broadband internet access is inherently an interstate service;³⁶ therefore the agency can use its federal jurisdictional authority to designate carriers seeking universal service funds as eligible to offer these services.³⁷

Many potential LBPs have highlighted the patchwork of state ETC requirements and the significant burden it places on ETCs.³⁸ The Lifeline Connects Coalition explains that the states' failure to designate ETCs has artificially restricted competitors from entering into the marketplace and serving low-income consumers.³⁹ Given the role Lifeline plays in bringing broadband to low-income Americans and the need for a streamlined ETC process, the Commission determined it was clearly within its authority to create a federal Lifeline Broadband Provider designation process.

³⁴ *Id.* at 3.

³⁵ *See Lifeline Modernization Order*, 31 FCC Rcd at 4041 ¶¶ 223-276 (2012).

³⁶ *See, e.g., Protecting and Promoting the Open Internet*, Report and Order On Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 ¶ 431 (2015).

³⁷ *See Lifeline Modernization Order*, 31 FCC Rcd at 4050 ¶ 243.

³⁸ *See* Comments of Sprint Corporation, WC Docket Nos. 11-42, 09-107, 10-90, at 32 (Aug. 31, 2015) (stating that streamlining the approval process for ETCs will improve program efficiency); Comments of Cox, WC Docket Nos. 11-42, 09-107, 10-90, at 3 (Aug. 31, 2015) (explaining that streamlining the ETC designation process would result in increased provider participation); Comments of Telscape Communications, Inc. and Sage Telecom Communications, LLC, WC Docket Nos. 11-42, 09-107, 10-90, at 13-14 (Aug. 31, 2015) (noting that state ETC requirements are burdensome to ETCs).

³⁹ *See* Lifeline Connects Coalition Comments at 3-4.

V. Conclusion

For the aforementioned reasons, the WCB should reconsider its decision to revoke the LBP designations and encourage providers to enter the Lifeline market to increase the program's ability to bring broadband to as many low income Americans as possible.

Respectfully submitted,

/s/_____

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March 23, 2017